

REMARKS

Amendments to the claims

Claims 1-18 are pending in the application. Claims 1-5 and 13-15 are withdrawn from consideration. With this amendment, Applicant cancels withdrawn claims 1-5 and 13-15.

Restriction requirement

In the Office Action of October 20, 2004 the Examiner asserts, in a further restriction requirement, that the present application contains claims directed to four distinct species of the claimed invention, Group I (claims 6-9), Group II (claims 10-11), Group III (claim 12), and Group IV (claims 16-18).

The Applicant requests that the Examiner reconsider the requirement for restriction as discussed below.

1. The Examiner has issued a first restriction requirement on July 22, 2004, and Applicant has replied to the first restriction requirement on August 16, 2004. Therefore, this is the second restriction requirement issued by the Examiner. The Applicant respectfully protests to this kind of piecemeal prosecution by the USPTO. Although 37 CFR 1.142(a) provides that restriction is proper at any stage of prosecution up to final action, according to MPEP 811.02 "a second requirement may be made when it becomes proper" (emphasis added). In the response of August 16, 2004, Applicant has not amended the claims or added new claims.

Further, Applicant notes that the preliminary election made in the response of August 16, 2004 also depended on the fact that Applicant was under the belief that all method claims 6-12 and 16-18 would have been considered by the Examiner, once elected.

Therefore, there is no basis for the Examiner to assert that a second restriction requirement is now proper. Should the Examiner disagree with the Applicant, the Examiner is respectfully requested to explicitly set forth the reasons why the current restriction is only proper at this stage and was not proper on the July 22,

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2004 date of the first restriction.

2. Further, the Examiner is respectfully reminded that, as set forth in MPEP 816: 'The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.'

The Applicant submits that the Examiner, by simply repeating portions of the language of independent claims 6, 10, 12 and 16, has merely concluded that the species as claimed are distinct and has not provided the requisite reasons for that conclusion. Additionally, in the first restriction requirement of July 22, 2004, portions of the language of independent claims 6, 10, 12 and 16 were all grouped in the same paragraph (see section 2 of the Examiner's Action of July 22, 2004), to convey to the Applicant the Examiner's opinion that they all pertained to a single invention.

3. Applicant further notes that the total number of currently pending claims is only ten. The Examiner is respectfully reminded of MPEP 803, which requires that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." In view of the limited number of currently pending claims, we submit that searching all pending claims would not constitute a serious burden on the Examiner.

Therefore, Applicant submits that the restriction requirement set forth in the Office Action of October 20, 2004 is improper. As such, the Examiner is respectfully requested to withdraw the restriction requirement. However, as required under 35 USC § 121, the Applicant provisionally elects Group I, claims 6-9.

Additionally, the Applicant expects the Examiner to use a consistent test with respect to what matters are obvious and what matters are unobvious throughout the prosecution of this application. Because the Examiner is adopting a particular standard for

FROM LADAS & PARRY - L. A. 13239340202

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patentability in this case in terms of the election/restriction requirement, the Applicant will expect that the same test be used throughout the prosecution of this application if the Examiner does not withdraw the election/restriction requirement made in the official action.

IDS

Applicant has filed IDS's for the present application on July 23, 2004 and August 30, 2004. The Examiner is respectfully requested to acknowledge consideration of the documents cited in the IDS's.

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The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, fax no. (703)-872-9306 on

Respectfully submitted,

November 22, 2004

(Date of Deposit)

Susan Papp

(Name of Person Depositing)

Susan Papp

Signature

11/22/04

Date

Robert Popa

Attorney for Applicant

Reg. No. 43,010

LADAS & PARRY

5670 Wilshire Blvd., Suite 2100

Los Angeles, CA 90036

(323)934-2300